

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
The Development of a National Framework to )  
Detect and Deter Backsliding to Ensure )  
Continued Bell Operating Company Compliance )  
with Section 271 of the Communications Act )  
Once In-region InterLATA Relief is Obtained )

RM-9474

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**REPLY COMMENTS OF BELL SOUTH CORPORATION  
IN OPPOSITION TO PETITION FOR EXPEDITED RULEMAKING**

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BellSouth Corporation, for itself and its affiliated companies (BellSouth), submits these reply comments in response to the comments filed in the above matter.

Allegiance's petition seeks a Commission rulemaking to create performance measures, standards, penalties and to address a grab bag of other miscellaneous unrelated issues. BellSouth's Comments illustrated the various infirmities of Allegiance's Petition. BellSouth's Comments also highlighted the major failing of Allegiance's petition -- the Commission and the industry are already well into rulemakings addressing Allegiance's issues. Two pending proceedings address substantially all of the issues raised by Allegiance. Performance measures, standards and penalties are being addressed in *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*,

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Notice of Proposed Rulemaking, CC Dkt. No. 98-56, FCC 98-72, 13 FCC Rcd 12817 (1998)(*Performance Measures NPRM*). Allegiance's collocation issues are being addressed in *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt No. 98-147, FCC 98-188, Memorandum Opinion, Order and Notice of Proposed Rulemaking (rel. Aug. 7, 1998).

As BellSouth and other parties point out in their comments, the Commission's pending *Performance Measures NPRM* is pursuing the proper approach to the performance issues raised by Allegiance's petition. The Commission has explained that its first step is to develop a set of performance measures. After the Commission and industry have gained experience with the operation of these measures, then the creation of performance standards and penalties may be properly addressed. *Performance Measures NPRM* ¶¶ 125-130.

A number of parties agreed with BellSouth that Allegiance's petition should be rejected because there is no sense in beginning a duplicative rulemaking. AT&T agrees that "it is not necessary to commence a new rulemaking to deal with those matters." *AT&T Comments* at 4. Similarly, MCI suggests returning to the *Performance Measures NPRM* rather than beginning anew. *MCI Comments* at ii. *See also Ameritech Comments* at 2.

Allegiance's petition would also have the Commission reverse its current course of action and create standards and penalties without benefit of well constructed performance measures. Allegiance's penalty proposal led commenters to put forward elaborate schemes to transfer money from incumbents to new entrants.<sup>1</sup> As the

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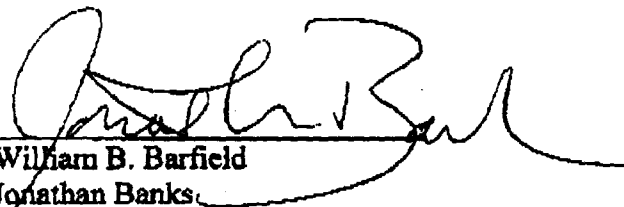
<sup>1</sup> Commenters' plans for speedy "self-executing" penalties ignore essential constitutional and statutory due process requirements. For example, section 271(d)(6) requires a "notice and opportunity for

Commission has already determined, no acceptable scheme of penalties can be constructed until the industry has gained experience with the actual operation of performance measures. *Performance Measures NPRM* at ¶ 130. AT&T echoes BellSouth's comments that the Commission should continue with its current approach rather than put the cart before the horse. *AT&T Comments* at 6; *BellSouth Comments* at 3-4. No party puts forward any substantive reason or argument that the Commission should do otherwise.

The Commission should dismiss Allegiance's petition. No new proceedings are required or appropriate to address the issues Allegiance has raised.

Respectfully Submitted,

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hearing" before Commission action. It further specifies that penalties may be assessed only pursuant to Title V and the procedures outlined there. BellSouth's actual experience with a "Rocket Docket" proceedings has emphasized the need for mandatory pre-complaint proceedings to provide at least a modicum of process. BellSouth Comments, *In the Matter of Implementation of the Telecommunications Act of 1996, and Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Dkt. 96-238.

## CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of March, 1999 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS OF BELLSOUTH CORPORATION** by hand-delivery (\*\*\*\*) or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties at the addresses shown below:

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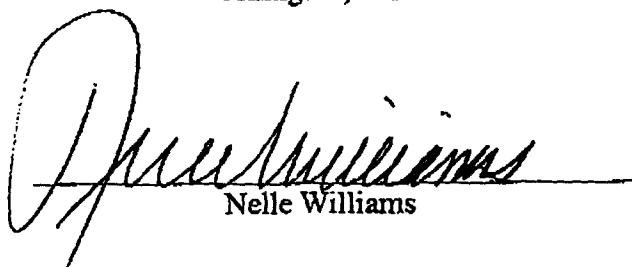
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